STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
GILBERT PIERCE,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2006CA2920
	)	EEOC NO(S): N/A
and	)	ALS NO(S): 07-344
	)	
AUTOZONE, INC.,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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GILBERT PIERCE,	)	
	)	
Complainant,	)	
	)	**Charge No.: 2006CA2920**
and	)	**EEOC No.: N/A**
	)	**ALS No.: 07-344**
AUTOZONE, INC.,	)	
	)	**Judge Lester G. Bovia, Jr.**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter has come to be heard on Respondent's Motion for Summary Decision ("Motion"). Complainant has filed a response to the Motion, and Respondent has filed a reply. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings, affidavits, and other documents submitted by the parties. The findings did not require, and were not the result of, credibility determinations. Moreover, all evidence was viewed in the light most favorable to Complainant.

1. Complainant's date of birth is December 12, 1943.

2. In or about February 2005, Respondent hired Complainant as a part-time sales manager for its Rochelle, Illinois store.

3. On or about January 8, 2006, Respondent reduced Complainant's work hours to approximately four hours per week.

4. On April 3, 2006, Complainant filed a charge of discrimination with the Department alleging that Respondent reduced his hours due to age discrimination. Respondent denies Complainant's allegation.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. Complainant likely can establish a *prima facie* case of age discrimination.

3. Respondent has articulated legitimate, nondiscriminatory reasons for reducing Complainant's hours.

4. Complainant cannot establish that Respondent's proffered reasons are pretextual.

5. There is no genuine issue of material fact regarding Complainant's claim, and Respondent is entitled to a recommended order in its favor as a matter of law.

DISCUSSION

I. SUMMARY DECISION STANDARD

Under section 8-106.1 of the Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill. App. 3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill. App. 3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). Although not required to prove his case as if at a hearing, the non-moving party must provide *some* factual basis for denying the motion. Birck v. City of Quincy, 241 Ill. App. 3d 119, 121, 608 N.E.2d 920, 922 (4th

Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. Chevrie v. Gruesen, 208 Ill. App. 3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240 (1986).

II. COMPLAINANT LIKELY CAN ESTABLISH A *PRIMA FACIE* CASE OF AGE DISCRIMINATION

A. Establishing Age Discrimination Under The Act

There are two methods for proving employment discrimination under the Act, direct and indirect. Sola v. Human Rights Comm'n, 316 Ill. App. 3d 528, 536, 736 N.E.2d 1150, 1157 (1st Dist. 2000). Because there is no direct evidence of employment discrimination in this case (*e.g.*, a statement by Respondent that it reduced Complainant's hours because of his age), the indirect analysis is appropriate here.

The analysis for proving a charge of employment discrimination through indirect means was described in the U.S. Supreme Court case of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and is well established. First, Complainant must make a *prima facie* showing of discrimination by Respondent. Texas Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 254-55 (1981). If he does, then Respondent must articulate a legitimate, nondiscriminatory reason for its actions. Id. If Respondent does so, then Complainant must prove by a preponderance of evidence that Respondent's articulated reason is merely a pretext for unlawful discrimination. Id. This analysis has been adopted by the Commission and approved by the Illinois Supreme Court. See Zaderaka v. Human Rights Comm'n, 131 Ill.2d 172, 178-79 (1989).

To establish a *prima facie* case of age discrimination, Complainant must prove: 1) he was at least 40 years of age at the time of the adverse job action; 2) he was meeting Respondent's legitimate performance expectations; 3) he suffered an adverse job action; and 4) similarly situated, younger employees were treated more favorably. Honaker and Rhopac Fabricators, Inc., IHRC, ALS No. 12089, July 10, 2006.

Respondent does not dispute that Complainant, who was 62 years of age during the relevant time period, is protected from unlawful age discrimination. Respondent challenges every other element of Complainant's *prima facie* case. However, as discussed below, Complainant likely can establish a *prima facie* case of age discrimination.

B. Complainant Can Establish That His Job Performance Met Respondent's Legitimate Expectations

Without supplying any evidence to support its position, Respondent denies that Complainant was meeting its legitimate performance expectations at the time that it reduced Complainant's hours. Also without supplying any evidence, Complainant disagrees. In connection with a motion for summary decision, this factual dispute must be resolved in favor of Complainant. Kolakowski, 76 Ill. App. 3d at 456-57, 395 N.E.2d at 9. Thus, Complainant can satisfy element two.

C. Complainant Can Establish That He Suffered An Adverse Job Action

To satisfy element three, Complainant alleges that Respondent reduced his work hours to approximately four hours per week, which significantly reduced his compensation. Respondent does not deny that it reduced Complainant's hours. Instead, Respondent asserts that Complainant suffered no adverse job action because he was not demoted or terminated. Respondent's position runs contrary to the plain language of the Act and Commission precedent. The Act provides that:

> It is a civil rights violation . . . [f]or any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status."

775 ILCS 5/2-102(A).

Unambiguous statutory language, in the Act or elsewhere, must be given its plain and ordinary meaning. Carter Coal Co. v. Human Rights Comm'n, 261 Ill. App. 3d 1, 6, 633 N.E.2d 202, 206 (5th Dist. 1994). The plain language of the Act makes it clear that the Act protects

employees from far more than just discriminatory demotions and terminations. Based on the Act's broad language, the Commission routinely has held that a reduction in hours or pay constitutes an adverse job action. See, e.g., Holman and Ill. Dep't of Children and Family Servs., IHRC, ALS No. 10649, February 21, 2002; Barz and Electro Motive, IHRC, ALS No. 10177, December 1, 1999. Therefore, Complainant clearly can satisfy element three.

D. Complainant Can Establish That Respondent Treated A Similarly Situated, Younger Employee More Favorably

In his affidavit, Complainant identified Anthony Nilburn as a similarly situated, younger employee of Respondent who has received more favorable treatment. (Complainant's Affidavit at 1.) Complainant avers that he and Mr. Nilburn are both part-time sales managers, but that Respondent assigns Mr. Nilburn significantly more hours than it assigns to Complainant. (Id.) In response, Respondent has supplied personnel records purporting to show that Mr. Nilburn, unlike Complainant, is a full-time employee. (See Assorted Personnel Records, Respondent's Motion at Ex. G.) As a result, Respondent argues, Mr. Nilburn is expected and assigned to work more hours than Complainant.

Again, when the parties offer conflicting evidence, the law is clear: the evidence must be construed in favor of the non-moving party. Kolakowski, 76 Ill. App. 3d at 456-57, 395 N.E.2d at 9. Therefore, Complainant can satisfy element four.

III. RESPONDENT HAS ARTICULATED LEGITMATE, NONDISCRIMINATORY REASONS FOR REDUCING COMPLAINANT'S HOURS, WHICH COMPLAINANT CANNOT ESTABLISH ARE PRETEXTUAL

Although Complainant likely can establish a *prima facie* case of age discrimination, that is not the end of the inquiry because Respondent has articulated legitimate, nondiscriminatory reasons for reducing Complainant's hours. Respondent asserts that an employee's hours, such as Complainant's, often fluctuate due to the business and staffing needs of the store at which the employee works. Respondent claims that it warns its employees about this fact in its employee manual. (See Excerpt from Employee Manual, Respondent's Motion at Ex. B.)

Respondent asserts further that Complainant is inflexible in that he has refused to work evenings or weekends, which also negatively affects his hours. (See Complainant's Application for Employment, Respondent's Motion at Ex. C.)

The issue, then, is whether Complainant can prove that Respondent's proffered reasons are pretextual. To prove pretext, Complainant must show: 1) the proffered reasons have no basis in fact; 2) the proffered reasons did not actually motivate the decision; or 3) the proffered reasons are insufficient to motivate the decision. Grohs v. Gold Bond Bldg. Prods., 859 F.2d 1283, 1286 (7th Cir. 1988). In short, a pretext is a lie. Hobbs v. City of Chicago, 573 F.3d 454, 461 (7th Cir. 2009).

Complainant has offered no evidence whatsoever to challenge the legitimacy of Respondent's proffered reasons for reducing his hours. Thus, even though Complainant likely can establish a *prima facie* case of age discrimination, his claim will fail in any event.

RECOMMENDATION

Based on the foregoing, there is no genuine issue of material fact regarding Complainant's age discrimination claim, and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 5, 2010